

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1975 OF 2005

(Against the order dated 1.10.05 in Appeal No.244/04
of the State Commission, Karnataka)

Dr. S.P. Thirumala Rao
Consultant Physician
No.1138/3, Narayanasastry Road
Devaraja Mohalla
Mysore – 570 001

..... Petitioner

Vs.

Municipal Commissioner
Mysore City Municipal Corporation
Sayyaji Rao Road.
Mysore – 570 024

.....Respondent

BEFORE:

**HON'BLE MR. JUSTICE R.K. BATTÀ,
PRESIDING MEMBER
HON'BLE MR. S.K. NAIK, MEMBER**

For the Petitioner : Mr. Aditya Narain, Advocate
Ms. Astha Tyagi, Advocate
For the Respondent : NEMO

Pronounced on : 28th May, 2009

ORDER

PER JUSTICE R.K. BATTÀ, PRESIDING MEMBER

The grievance of the complainant who is Consultant Physician is that some private telephone provider had dug up the footpath in front of his clinic, for laying telephone cables and after laying the PVC pipes, failed to restore the footpath in original condition. The damaged footpath and projected PVC pipe was causing obstruction to his patient and pedestrians. He, therefore, filed two applications before the opposite party on 10.2.2003, under Rule 4(1) of the Karnataka Right to Information Act, 2002 (hereinafter referred as the said Act) seeking information about the said private telephone provider. The OP was required to furnish information within 15 days under the Act, but the said information was not furnished which according to the complainant amounts to deficiency of service. The complainant, therefore, filed a complaint before the District Forum claiming damages/compensation of Rs.30,000/- and cost of Rs.1,000/-.

The opposite party in affidavit dated 26.8.2003 submitted that the information could not be given within the time prescribed due to heavy work in the office. In the affidavit it was stated that the private telephone provider, namely; Reliance Company and the Government of India through the Department of Telecommunication had laid down the cables and the Corporation had nothing to do with the said act of the Reliance Company.

The District Forum had framed 4 points for consideration, which are as under:

1. 1. *Whether Section 11 of the K.R.I. Act, 2002 has got overriding effect on the provision of the Consumer Protection Act, 1986?*
2. 2. *Whether Section 10 of the K.R.I. Act, 20002 bars the jurisdiction of the Consumer Forum?*
3. 3. *Whether this forum has no jurisdiction as an appeal is provided under Section 7 of the K.R.I. Act, 2002 for not furnishing the information;*
4. 4. *Whether the complainant has proved deficiency in service, if so, to what relief he is entitled?*

On the first point, it was held that Section 11 of the Karnataka Right to Information Act does not have any overriding effect on the Consumer Protection Act, 1986. On the question of bar of jurisdiction of Courts under Section 10 of the Karnataka Right to Information Act, it was held that Section 3 of the Consumer Protection Act, 1986 provides an additional remedy; that the bar of jurisdiction under Section 10 of the Act is only against the Courts as also in respect of the order made under the Act but in this case the OP had not passed any order on account of which, the question of bar of jurisdiction does not arise and it is a case of deficiency of service. On the third point, the District forum held that since the OP did not furnish information in time, the complainant could not approach proper authority for redressal of his grievance on account of deficiency of service, a such he was entitled to invoke the jurisdiction of District Forum. On quantum of damages, it was stated that nominal damages would be sufficient as a token of recognition of valuable Right to Information. Accordingly, District

forum directed OP to pay damages of Rs.500/- and cost of Rs.100/-. This order was challenged by the OP before the State Commission.

The State Commission referred to Section 7 of the Karnataka Right to Information Act, 2002 and held that since no communication was sent to the complainant within 15 working days of filing the applications in terms of Section 5 of the Act, it is a case of deemed rejection against which, an appeal is provided under Clause II of Section 7 of the said Act. The State Commission also took into account that though the remedy under Section 3 of the CP Act is in addition to remedy provided under other Acts and not in derogation of the provisions of any other law, yet, once the complainant has availed the remedy against which appeal is provided, he cannot maintain a complaint under the CP Act. Accordingly, the appeal was allowed and the order of the District Forum was set aside. This order is subject matter of challenge before us.

Ld. Counsel for the petitioner was heard.

The Respondent was duly served for 23.2.2009 when the matter was fixed for final hearing but the respondent did not appear. The acknowledgement card of service of Respondent is kept in Part II file. No one appeared for the respondent.

Ld. Amicus Curiae appearing on behalf of the petitioner took us through the various provisions of Karnataka Right to Information Act, 2002 and submitted

before us that the complainant had sought information under the said Act and as per Section 5(2), the information is to be supplied within 15 working days from the date of receipt of the application. Since the said information has not been furnished, there is deficiency of service on account of which, the complainant is entitled to approach the District Forum in view of Section 3 of the CP Act, even though, the complainant has not filed any appeal as provided under Section 7 of the said Act. According to Ld. Counsel for the petitioner, on account of deficiency in service in not providing information to which the petitioner was entitled under the said Act, the petitioner is a consumer who has availed the services of opposite party on payment of application fee for the said purpose. After placing reliance on the judgement of this Commission in **Smt. Kalawati & Ors. Vs. United Vaish Co-operative Thrift & Credit Society Ltd.** – I (2002) CPJ 71 (NC) and judgement of this Commission in **Smt. Ushal Rani Aggarwal Vs. Nagar Palika Parishad** (R.P. No. 2774 of 2004) decided on 6.9.2006, it was urged that Section 10 of the said Act does not bar the jurisdiction of the District Forum since only the jurisdiction of Court has been barred and in view of Section 3 of the CP Act, 1986, the matters pertaining to deficiency of service under the Karnataka Right to Information Act can be entertained by the Consumer Fora. On the question of additional remedy, reliance was placed on **Fair Air Engineers Pvt. Ltd. & Anr. Vs. N.K. Modi** – III (1996) CPJ 1 (SC) and **Skypak Couriers Ltd. Vs. Tata Chemicals Ltd.** – AIR 2000 SC 2008 in which it was held that despite the existence of an arbitration clause, the complaint by a consumer under

CP Act, 1986 was tenable since the remedy provided under the CP Act is in addition to the provisions of law for the time being in force. Reliance was also placed on the judgement of **Lucknow Development Authority Vs. M.K. Gupta** – (1994) 1 SCC 243 and it was urged that revision be allowed and compensation ordered by the District Forum be maintained.

The District Forum had dealt with the objections raised by the opposite party regarding bar of jurisdiction of Courts under Section 10 of the Act as also the overriding affect of the Act. The State Commission in the impugned order did not at all refer to the findings of the District Forum on the said issues but allowed the appeal only on the ground that once the complainant had already availed remedy under the said Act and appeal is provided therein, the complainant cannot maintain a complaint under the CP Act. We may at this stage point out that the findings of the District Forum with reference to Section 10 & 11 are supported by reasons which do not call for any interference. In fact, the view taken by the District Forum is in consonance with the rulings of this Commission in the case of Smt. Kalawati (Supra) and Smt. Ushal Rani Aggarwal (Supra). We entirely agree with the reasoning of District Forum on this aspect. Though, the said Act provides for penalties under Section 9 of the said Act on the competent authority, yet, the Act does not provide for any remedy to the consumers who have sought information under the said Act for deficiency of service in the nature of compensation or damages for not furnishing the informations ought to which

they are entitled to get under the said Act. Section 3 of the CPA provides additional remedy in addition to the remedies provided under other Acts and it is not in derogation of any provisions of any law. The Consumer Fora has, therefore, jurisdiction to entertain the complaint in respect of deficiency of service in the given facts especially when information sought was not furnished. The competent authority was required to give information within 15 days of the application in terms of Section 5 of the said Act. However, the said information was not furnished. The complainant had approached the District Forum claiming compensation/damages for deficiency of service. Even though, further remedy may be available to the applicant in case information is not supplied in terms of Section 5 of the Act within 15 days, yet, there is no bar to approach the District Forum for deficiency of service. The remedy under the said Act would take care of disciplinary action and penalty against the competent authority in not furnishing the information but no remedy is provided under the said Act to the applicant seeking information therein if information sought is not provided resulting in deficiency of service on that count. The applicant had paid a fee of Rs.10/- for seeking the said information. The case of the applicant would fall within the scope and ambit of Section 2(i)(o) of CP Act, which provides that service means service of any description which is made available to potential users, which include purveying of news or supplying of other information. The complainant had availed of the services under the said Act for consideration by paying fee and had sought information under the said Act, which was not

supplied to him, which amounts to deficiency of service. The complainant is, thus, a consumer vis-à-vis information sought on payment under the said Act. In our view, therefore, the State Commission was wrong while holding that once the complainant had availed the remedy against which appeal was provided, he could not maintain a complaint under the CP Act.

For the aforesaid reasons, the impugned order of the State Commission is liable to be set aside and the order of the District Forum is restored. In the facts and circumstances, we shall leave the parties to bear their own cost.

.....J
(R.K. BATTÀ)
(PRESIDING MEMBER)

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(S.K. NAIK)
MEMBER

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